IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

WP(C).No. 1628 of 2007(R)

PETITIONER:

M.GOPALAKRISHNAN, AGED 55 YEARS,
S/O. LATE SRI. K.MANIAN ACHARI,
EXECUTIVE ENGINEER (RTD.), KERALA WATER AUTHORITY,
RESIDING AT 'SREE GURU KRIPA', VENKITESA GARDEN,
PALLIPURAM P.O., PALAKKAD DISTRICT.

BY ADV. SRI.K.RAMAKUMAR
SRI.T.RAMPRASAD UNNI

RESPONDENT:

THE KERALA WATER AUTHORITY,
REPRESENTED BY ITS MANAGING DIRECTOR,
JALABHAVAN, VELLAYAMBALAM, THIRUVANANTHAPURAM.

BY ADV. SRI.C.UNNIKRISHNAN, SC, KWA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE REPRESENTATION DTD. 3.10.2006 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT.

EXT. P2: COPY OF THE COVERING LETTER DATED 12.7.06 ISSUED BY THE DIRECTOR, VIGILANCE & ANTI CORRUPTION BUREAU, THIRUVANANTHAPURAM, TO THE PETITIONER ALONG WITH THE RELEVANT EXTRACT.

RESPONDENT'S EXHIBITS:

EXT. R1(A): COPY OF THE LETTER DT.30.11.2005.

EXT. R1(B): COPY OF THE RESOLUTION DATED 24.09.07 PASSED BY THE KWA BOARD.

EXT. R1(C): COPY OF THE SUSPENSION ORDER DATED 15.2.01.

EXT. R1(D): COPY OF THE ORDER NO.KWA/JB/E6(C)/14491/98 DT. 26.3.2003.

EXT. R1(E): COPY OF THE G.O.(P)803/2002/FIN DT.30.12.2002.

EXT. R1(F): COPY OF THE G.O.(P) 185/2002/FIN DT. 27.03.2002.

/TRUE COPY/

P.A. TO JUDGE

JP

V.GIRI, J.

W.P.(C).No.1628 of 2007 R

Dated this the 18th day of October, 2007.

JUDGMENT

The petitioner retired from service as an Assistant Executive Engineer from the Water Authority on 31.5.2006. His grievance is that the retirement benefits due to him, viz., the pension and Death cum Retirement Gratuity have not been disbursed to him, so far.

2. A Counter affidavit and an additional counter affidavit have been filed by the Water Authority. According to them, a vigilance case has been registered against the petitioner and pursuant to a direction issued by the Government, the Water Authority considered whether the vigilance case as against the petitioner should be proceeded with or not. It is contended by the respondent that the Water Authority, in its 299th meeting held on 21.8.2007, as evidenced by Ext.R1(b), decided to refer the case of the petitioner to the Vigilance Tribunal for a detailed enquiry.

3. Learned counsel for the petitioner Mr.Ramprasad Unni submits that the decision to refer the petitioner's case to the Vigilance Tribunal seems to have been taken only after institution of this writ petition. He refers to Ext.R1(c), proceedings of the Chief Engineer issued on 15.2.2001, wherein, with reference to the same allegations, as are now sought to be made the subject matter of the vigilance enquiry, the petitioner was placed under suspension. Subsequently, the suspension was revoked as per Ext.R1(d) on 26.3.03. Nothing was really heard by the petitioner till he retired in June, 2006. He contends that the decision to proceed against the petitioner before the Vigilance Tribunal, after the retirement of the petitioner is mala fide and even otherwise unjustified. He contends that the petitioner may have to wait for years till the proceedings come to an end and obviously it will be unjust that the retirement benefits are withheld, till the conclusion of such proceedings.

4. After having heard learned counsel for the petitioner and learned standing counsel for the Water Authority Mr.Unnikrishnan, I am of the view that it would not be fair to withhold the entire retirement benefits due to the petitioner pending finalization of the proceedings. Obviously, one will not be in a position to postulate when such proceedings will come to an end. Either before retirement or as on date, the liability as against the petitioner has not been finalized. In fact, no liability had been fixed against him so far. But the Water Authority is entitled to fix the liability within a period of 3 years from the date on which the petitioner became a pensioner.

5. In the facts and circumstances, I feel that the Water Authority shall complete the proceedings which are relevant for the purpose of disbursement of the Death cum Retirement Gratuity within a short time. Moreover the petitioner, at any rate, is entitled to provisional pension.

6. In the circumstances, the writ petition is disposed of in the following terms:

(a) 1st respondent shall issue a notice to the petitioner indicating whether any liability is sought to be fixed against the petitioner within a period of three weeks from the date of receipt of a copy of this judgment.

(b) Petitioner shall file objections within a period of three weeks thereafter and the respondent shall take a decision in the matter of fixation of the liability, if any, as against the petitioner, within a period of one month thereafter.

(c) If the Water Authority feels that the liability as regards the petitioner cannot be finalized or quantified until the proceedings before the Vigilance Tribunal is completed, then they shall record such satisfaction in an order that may be communicated to the petitioner within the aforementioned time frame and thereupon the Death cum Retirement Gratuity shall be disbursed

to him, on the petitioner executing a bond and also furnishing a security of immovable property which is acceptable to the Water Authority.

(d) The respondent shall pay to the petitioner provisional pension as is admissible under the Rules. Such provisional pension shall be disbursed within a period of two months from the date of receipt of a copy of this judgment.

The entire pension, as are due and admissible in terms of the Rules, shall be disbursed to the petitioner on completion of the vigilance enquiry. This is without prejudice to the right of the respondent to take appropriate proceedings in relation to the pension, as is permissible in law. Any other benefits due to him shall also be disbursed, as mentioned above.

Sd/-
(V.GIRI)
JUDGE

sk/

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